

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
PER CURIAM

EN BANC

CA07-1040

March 5, 2008

DONALD A. CASTLEBERRY, as the
Personal Representative of BOBBY L.
CASTLEBERRY, Individually, on Behalf of
his Beneficiaries, and on Behalf of his Estate
APPELLANT

v.

DR. CHARLES FOHN, et al.
APPELLEES

AN APPEAL FROM OUACHITA COUNTY
CIRCUIT COURT
[Nos. CV-06-67-6]

HONORABLE DAVID GUTHRIE,
CIRCUIT JUDGE

DISMISSED

This appeal is from a partial summary judgment entered by the Ouachita County Circuit Court that dismissed appellant's wrongful-death claims against appellees, Dr. Charles Fohn and Dr. Charles H. Fohn, M.D., P.A. The court, after finding that appellant's claims against appellees were for negligence and filed outside the two-year statute of limitations, granted partial summary judgment to appellees. On appeal, appellant argues that the court should have computed the limitation period from the date of the decedent's death, in which case his filing suit would have been timely, and not from the date of the decedent's last treatment by Dr. Fohn. We are unable to address this argument, however, because the partial summary judgment from which appellant appeals did not dismiss appellant's claims against the other defendants, Ouachita County Medical Center and John Does 1-6.

Rule 2(a)(1) of the Arkansas Rules of Appellate Procedure—Civil provides that an appeal may be taken only from a final judgment or decree entered by the trial court. The question of whether an order is final and subject to appeal is a jurisdictional question that this court will raise on its own. *Moses v. Hanna's Candle Co.*, 353 Ark. 101, 110 S.W.3d 725 (2003). Arkansas Rule of Civil Procedure 54(b) provides that, when more than one claim for relief is presented in an action or when multiple parties are involved, an order that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not a final, appealable order. See *Hambay v. Williams*, 335 Ark. 352, 980 S.W.2d 263 (1998); *S. Co., Inc. v. First W. Loan Co.*, 311 Ark. 501, 845 S.W.2d 3 (1993). It has been specifically held that, where John Doe claims have not been determined, dismissal on the basis of Rule 54(b) is appropriate. *Wilkins & Assoc., Inc. v. Viny Ridge Mun. Water Improvement Dist.* 139, 369 Ark. 50, ___ S.W.3d ___ (2007).

Rule 54(b) allows a trial court, when it finds no just reason for delaying an appeal, to direct entry of a final judgment as to fewer than all the claims or parties by executing a certification of final judgment as it appears in Rule 54(b)(1). Absent this required certification, any judgment, order, or other form of decision that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action. See *Jackson v. Delis*, 76 Ark. App. 436, 67 S.W.3d 596 (2002). No such certification was made in this case.

Because appellant's claims against Ouachita County Medical Center and John Does 1-6 remain pending and there is no Rule 54(b) certification, we dismiss the present appeal without prejudice.

Dismissed without prejudice.